

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
P.O. BOX 942732
SACRAMENTO, CA 94234-7320



TO: All County Welfare Directors
All County Administrative Officers

September 7, 1990
Letter No: 90-82

SUBJECT: REGULATIONS ON JOINT CUSTODY

REFERENCE: ACWDL 86-60

This is to advise you that there are several regulations which now address the issue of joint custody and the determination of the caretaker parent. Counties may not be aware of these changes since the Medi-Cal Eligibility Manual has not been updated.

We have enclosed a copy of Title 22 Sections 50071 and 50213 which were amended and 50374 which was adopted for your information. Please also note that answer Number 5 on page 5C-8 of the Medi-Cal Procedures Manual is now incorrect based on these regulation changes. A draft of the corrected answer is enclosed.

If you have any further questions, please contact Marge Buzdas at (916) 324-4972.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

TITLE 22**MEDICAL ASSISTANCE PROGRAM****§ 50071**

(Register 83, No. 48—12-2-89)

(p. 1214.2.1)

50067. Overpayment.

Overpayment means the receipt of Medi-Cal benefits when there is no entitlement to all or a portion of the benefits received.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14009, 14014, 14023 and 14024, Welfare and Institutions Code.

HISTORY:

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

50068. Parent.

Parent means the natural or adoptive parent of a child.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14051 and 14052, Welfare and Institutions Code.

HISTORY:

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

50069. Parents—Unmarried.

Unmarried parents means parents who are living together with their common child and the parents are not married to each other.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14051 and 14052, Welfare and Institutions Code.

HISTORY:

1. Editorial correction adding NOTE filed 7-7-83 (Register 83, No. 29).

50069.5. Parent—Unmarried Minor.

Unmarried minor parent means a person who meets the definition of a child and has children living in the home.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008, 14051 and 14052, Welfare and Institutions Code.

HISTORY:

1. New section filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).

50070. Patient.

Patient means a person receiving individual professional services directed by a licensed practitioner of the healing arts towards maintenance, improvement, or protection of health, or the alleviation of disability or pain.

50071. Persons Living in the Home.

(a) Persons living in the home means all of the following:

- (1) Persons physically present in the home;
- (2) Persons temporarily absent from the home because of hospitalization, visiting, vacation, trips in connection with work, or because of similar reasons as limited by (d).
- (3) Persons away at school or vocational training who will resume living in the home as evidenced by the person returning home for vacations, weekends and at other times.

(b) A temporary absence is normally one in which the person leaves and returns to the home in the same month or the following month.

(c) Whether a person is living in the home while in LTC or board and care shall be determined in accordance with Section 50377.

(d) A child, other than specified in (e), temporarily absent from the home in accordance with (a) (2) shall be considered to be living in the home as long as the parent continues to have responsibility for the care and control of the child. A parent continues to have responsibility for the care and control of a

child until the court removes this responsibility or the parent voluntarily relinquishes it in accordance with Department of Social Services, Manual of Policies and Procedures, Division 30.

(e) The home in which a child shall be determined in accordance with Section 50374 when both of the following conditions exist:

(1) The child stays alternately for periods of one month or less with each of his/her parents.

(2) The child's parents are separated or divorced.

(f) An 18 to 21 year old or unmarried minor parent living on the parent's property shall not be considered to be living in the parent's home if both of the following conditions exist:

(1) The 18 to 21 year old or unmarried minor parent does not receive any support from the parents.

(2) The building the 18 to 21 year old or unmarried minor parents lives in would be considered other real property of the parents.

(g) A person whose institutional status results in ineligibility for Medi-Cal shall not be considered to be living in the home during any full month of institutionalization.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14008 and 14051, Welfare and Institutions Code.

HISTORY:

1. Amendment filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).

2. Amendment of subsection (c) filed 2-11-82; effective thirtieth day thereafter (Register 82, No. 7).

3. New subsection (f) filed 4-1-83; effective thirtieth day thereafter (Register 83, No. 14).

4. Amendment of subsection (d), relettering of former subsections (e) and (f) to subsections (f) and (g) and new subsection (e) filed 4-17-89; operative 5-17-89 (Register 89, No. 48).

50071.5. Prepaid Health Plan.

(a) Prepaid health plan means any health care service plan as defined in Health and Safety Code Section 1345 (f) which:

(1) Is licensed as a health care service plan by the Commissioner of Corporations pursuant to the Knox-Keene Health Care Service Plan Act of 1975, Chapter 2.2, commencing with Section 1340, Division 2, Health and Safety Code, or has an application for licensure pending and was registered under the Knox-Mills Health Plan Act prior to its repeal in Chapter 941, Statutes of 1975.

(2) Meets the requirements for participation in the Medicaid Program, Title XIX of the Social Security Act, on an at risk basis.

(3) Has a contract with the Department to furnish directly or indirectly health services to Medi-Cal beneficiaries on a predetermined periodic rate basis.

(b) The term "prepaid health plan" does not include any pilot program contract entered into pursuant to Article 7, commencing with Section 14490, Chapter 8, Part 3, Division 9, Welfare and Institutions Code.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14016.5, Welfare and Institutions Code.

HISTORY:

1. New section filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).

(A) The parent is prevented from working full-time at a job in which customarily engaged, and from working full-time on another job for which equipped by education, training or experience or which could be learned by on-the-job training.

(B) Employers refuse to employ the parent for work the parent could do and is willing to do, because of behavioral or other disorders which interfere with the securing and maintaining of employment.

(C) The parent is prevented from accomplishing as much on a job as a regular employee and, as a result, is paid on a reduced basis.

(D) The parent is blind or disabled in accordance with Section 50223(a) (1) or (b).

(E) The parent has qualified for and is employed in a job which is rehabilitative or therapeutic or is in a sheltered workshop, and which is not considered to be full-time.

(c) The following persons shall be linked to AFDC on the basis of this deprivation factor:

(1) The children of an incapacitated parent.

(2) The incapacitated parent.

(3) The spouse of the incapacitated parent or the second parent of the children whose basis of deprivation is an incapacitated parent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.3, 14005.7 and 14051, Welfare and Institutions Code.

HISTORY:

1. Amendment of subsection (b) (2) (D) filed 3-7-80 as an emergency; effective upon filing (Register 80, No. 9). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7-6-80.

2. Certificate of Compliance filed 6-6-80 (Register 80, No. 23).

3. Amendment of subsection (b) (2) (A) filed 8-8-80; effective thirtieth day thereafter (Register 80, No. 32).

4. Amendment of subsection (c) filed 1-8-81; effective thirtieth day thereafter (Register 81, No. 2).

50213. Deprivation—Absent Parent.

(a) Deprivation of parental support or care exists if there is continued absence of one or both of a child's parents from the home.

(b) Deprivation does not exist when one or both of the parents is absent from the home on a temporary basis, such as for a:

(1) Visit.

(2) Trip.

(3) Temporary assignment undertaken in connection with current or prospective employment.

(4) Parental absence due solely to active duty in the uniformed services of the United States. Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration and Public Health Service of the United States.

(c) Continued absence shall be considered to exist when a parent is physically absent from the home and both of the following conditions exist:

(1) The nature of the absence results in an interruption or termination of the parent's functioning as a provider of maintenance, physical care, or guidance for the child, regardless of the reason for the absence or the length of time the parent has been absent.

(2) The known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the children.

(d) When the conditions specified in (c) exist, regular or frequent visits with the child by a parent who is physically absent from the home shall not in and of itself prevent a determination that "continued absence" exists. "Continued absence" shall be considered to exist when the child lives with each parent for alternating periods of time.

(e) If the parent in the home has stated on the Statement of Facts that the other parent has left the family, this shall be considered to mean that there is continued absence unless the county department has conflicting information. In the case of conflicting information, the written statement shall be supported by at least one of the following:

(1) Written statements of the absent parent or other persons with prior knowledge of the family relationship.

(2) The actions of the applicant or beneficiary or the absent parent clearly indicate:

(A) Physical absence of the other parent.

(B) Interruption of or marked reduction in marital and family responsibilities.

(3) Other evidence that substantiates continued absence.

(f) Absence of a parent on active duty in the Armed Forces may or may not constitute deprivation, dependent upon whether or not the facts in the individual case indicate an interruption of, or marked reduction in, marital and family responsibilities. The county department shall determine if deprivation exists by examining each case individually in light of all relevant factors, including:

(1) Length of absence.

(2) Assignment to a duty station to which the family may not move.

(3) The financial impact on the family, if the parent may be accompanied to that station.

(4) The extent of family disruption that would be caused if family members would have to give up employment to accompany the parent to the assigned duty station.

(g) Children of an absent parent, and the parent in the home, shall be linked to AFDC on the basis of this deprivation factor. If the parent in the home is married, and the spouse also has children from a prior union, the following persons shall be linked to AFDC:

(1) The children of each parent, other than mutual children.

(2) Both parents.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.4, 14005.7 and 14051, Welfare and Institutions Code.

HISTORY:

1. Amendment of subsection (f) (2) filed 10-24-86; effective thirtieth day thereafter (Register 86, No. 43).

2. Amendment of subsection (b), repealer of subsection (e) and relettering of subsection (f) to subsection (e) filed 7-9-87; operative 8-8-87 (Register 87, No. 30).

3. Amendment of subsections (c)-(f) filed 4-17-89; operative 5-17-89 (Register 89, No. 48).

§ 50374
(p. 1238.20.10)

MEDICAL ASSISTANCE PROGRAM

TITLE 22

(Register 89, No. 48—12-2-89)

21. Married child, married child's spouse and children, and married child's parent(s) when the married child is claimed by his/her parent(s) as a dependent in order to receive a tax credit or deduction for state or federal income taxation.

21. Three MFBU's.
 - a. Married child claimed as tax dependent; married child's spouse and children as ineligible members, and married child's parent(s) as ineligible member(s).
 - b. Married child claimed as tax dependent as an ineligible member, married child's spouse and children.
 - c. Married child claimed as tax dependent as an ineligible member, married child's parent(s).

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; Section 87(c), Chapter 1594, Statutes of 1982; and Section 14, Chapter 1447, Statutes of 1984. Reference: Sections 14005.4, 14005.7, 14005.8 and 14008, Welfare and Institutions Code.

HISTORY:

1. Amendment of subsections (a) (1) and (a) (4) filed 4-15-85 as an emergency; effective upon filing (Register 85, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-13-85. For prior history, see Register 83, No. 21.
2. Certificate of Compliance transmitted to OAL 8-13-85 and filed 9-18-85 (Register 85, No. 38).
3. Amendment of subsection (a) (4) filed 12-3-85; effective thirtieth day thereafter (Register 85, No. 49).
4. Change without regulatory effect of subsections (a) (2) and (a) (5) (A) 10. (Register 87, No. 11).
5. Amendment of subsection (a) (3) filed 6-3-87; operative 7-3-87 (Register 87, No. 47). Ed. Note: The changes to the text of subsection (a) (3) were printed in Register 87, No. 24; however, the HISTORY NOTE was inadvertently omitted.
6. Amendment of subsection (a) (5) filed 4-17-89; operative 5-17-89 (Register 89, No. 48).

50374. MFBU Determination—Child Stays Alternately with Each Parent.

(a) A child, who stays alternately for periods of one month or less with each of his/her parents and the parents are separated or divorced, shall be included in the MFBU of the parent specified in this section. The child shall be included in the MFBU of the parent:

(1) With whom the child stays for the majority of time unless the other parent can establish that he/she has majority responsibility, as defined in (c), for care and control of the child.

(2) Who has majority responsibility, as defined in (c), when the child spends an equal amount of time with each parent.

(3) Who applies for Medi-Cal on behalf of the child, when the child spends an equal amount of time with each parent and each parent exercises an equal share of care and control responsibilities. When both parents apply for Medi-Cal for such a child, the child's MFBU shall be determined in accordance with (b).

(b) A child described in (a) (3) shall be included in the MFBU of the parent who solely meets one of the following conditions in the order specified. The parent who:

(1) Is designated in a current court order as the primary parent for purposes of public assistance, under Civil Code, Section 4600.5(h).

(2) Is eligible for Medi-Cal.

(3) Is designated, through mutual agreement of both parents, as the primary parent for purposes of public assistance.

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(4) First applied for Medi-Cal on behalf of the child.

(c) For purposes of this section, when determining which parent has majority responsibility for care of a child, the following factors shall be considered. In addition, other similar factors shall also be considered as a single factor may not be determinative. The determination shall include, the extent to which the parent:

- (1) Decides where the child attends school.
- (2) Deals with the school on educational decisions and problems.
- (3) Controls participation in extracurricular and recreational activities.
- (4) Arranges medical and dental care services.
- (5) Claims the child as a tax dependent.
- (6) Purchases and maintains the child's clothing.

(d) Once the MFBU has been determined with (a), (b) and (c), the child shall remain in that MFBU while staying with the other parent for alternating periods of one month or less. If the child stays with the other parent consecutively for more than one month, then the child shall be included in the MFBU of that parent.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Sections 14005.7, 14008 and 14051, Welfare and Institutions Code.

HISTORY:

1. New section filed 4-17-89; operative 5-17-89 (Register 89, No. 48).

50375. Medi-Cal Family Budget Unit Determination, Stepparent Cases.

(a) Family members in a family which includes a stepparent shall be in the same MFBU unless only the separate children of one parent wish to receive Medi-Cal and both of the following conditions are met:

(1) The stepparent has sufficient income to meet the needs of the stepparent unit as determined in (b) and (c).

(2) The applicant requests that only the separate children of one parent receive Medi-Cal. The right to make this choice and its effects shall be explained to the applicant at the time of the face-to-face interview.

(b) The stepparent unit shall consist of the following:

- (1) Stepparent.
- (2) Parent.
- (3) Mutual children.
- (4) Stepparent's separate children.

(c) The stepparent shall be considered to have sufficient income to meet the needs of the stepparent unit if the stepparent has net income equal to or greater than the maintenance needs for the stepparent unit. Net income of the stepparent shall be determined by subtracting the following from the stepparent's gross income:

- (1) Mandatory deductions, from gross earned income only.
- (2) Court ordered child support obligations.

(d) When the conditions of (a) (1) and (2) are met and only the separate children of one parent will receive Medi-Cal:

(1) The parent of the separate children shall be an ineligible member of the separate children's MFBU in accordance with Section 50379(e).

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5. A husband and wife have two children. The husband has the children one month and the wife has the children the next month. Is there deprivation?

Answer: Yes, if there is continued absence due to separation or divorce.

The following answers apply when the children spend an equal amount of time with each parent for periods of one month or less:

a. The children shall be included in the MFBU of the parent who has majority responsibility for care and control of the children.

b. When both parents have an equal amount of responsibility, the child shall be included in the MFBU of the parent who applies for Medi-Cal on behalf of the child.

c. If both parents apply for Medi-Cal for the child, the child shall be included in the MFBU with the parent who:

- (1) is designated in a court order as the primary parent for purposes of public assistance,
- (2) is eligible for Medi-Cal,
- (3) is designated through mutual agreement of both parents as the primary parent for purposes of public assistance, or,
- (4) first applied for Medi-Cal on behalf of the child.

If the children stay with the other parent consecutively for more than one month, then the child shall be included in the MFBU of that parent.